

HOUSE BILL 3185  
By Givens

AN ACT to amend Tennessee Code Annotated, Title 68, to establish state regulation of certain concentrated animal feeding operations and the use of flush system animal waste wet handling facilities by such operations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2 through 14 inclusive of this act as a new Chapter 222.

SECTION 2. For the purposes of this act, unless the context clearly requires otherwise:

(1) "Animal units" shall be defined by rules and regulations of the department of environment and conservation in effect as of July 1, 1998;

(2) "Animal waste wet handling facility" means all gravity outfall lines, recycle pump stations, recycle force mains and appurtenances;

(3) "Class 1A" means any concentrated animal feeding operation with a capacity of seven thousand (7,000) animal units or more;

(4) "Class 1B" means any concentrated animal feeding operation with a capacity between three thousand (3,000) animal units and six thousand nine hundred and ninety-nine (6,999) animal units inclusive;

(5) "Class 1C" means any concentrated animal feeding operation with a capacity between one thousand (1,000) animal units and two thousand nine hundred and ninety-nine (2,999) animal units inclusive;

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(6) "Class 2" means any concentrated animal feeding operation with a capacity of at least three hundred (300) animal units, but less than one thousand (1,000) animal units;

(7) "Department" means the department of environment and conservation;

(8) "Facility" means any class 1A concentrated animal feeding operation which uses a flush system;

(9) "Flush system" means a system of moving or removing manure utilizing liquid as the primary agent as opposed to a primarily mechanical or automatic device; and

(10) "Sensitive areas" means areas in the watershed located within five (5) miles upstream of any stream or river drinking water intake structure.

### SECTION 3.

(a) The department shall promulgate rules and regulations to regulate the establishment, permitting, design, construction, operation and management of class 1A, class 1B and class 1C concentrated animal feeding operations. The department shall have the authority and jurisdiction to regulate the establishment, permitting, design, construction, operation and management of any class 1A, class 1B or class 1C concentrated animal feeding operation. Such rules and regulations may require monitoring wells on a site-specific basis when, in the determination of the department, class 1A concentrated animal feeding operation lagoons are located in hydrologically sensitive areas where the quality of groundwater may be compromised. Such rules and regulations shall be designed to afford a prudent degree of environmental protection while accommodating modern agricultural practices.

(b) Except as provided in subsections (c) and (d), the department shall require at least but not more than the following buffer distances between the nearest confinement building or lagoon and any public building or occupied residence, except a residence

which is owned by the concentrated animal feeding operation or a residence from which a written agreement for operation is obtained:

(1) For concentrated animal feeding operations with at least one thousand (1,000) animal units, one thousand (1,000) feet;

(2) For concentrated animal feeding operations with between three thousand (3,000) and six thousand nine hundred ninety-nine (6,999) animal units inclusive, two thousand (2,000) feet; and

(3) For concentrated animal feeding operations of seven thousand (7,000) or more animal units, three thousand (3,000) feet.

(c) All concentrated animal feeding operations in existence prior to July 1, 1998, shall be exempt from the buffer distances prescribed in subsection (b). Such distances shall not apply to concentrated animal feeding operations which have received a written agreement which has been signed by all affected property owners within the buffer distance.

(d) The department may, upon review of the information contained in the site plan, including, but not limited to, the prevailing winds, topography and other local environmental factors, authorize a distance which is less than the distance prescribed in subsection (b). The department's recommendation shall be sent to the governing body of the county in which such site is proposed. The department's authorized buffer distance shall become effective unless the county legislative body rejects the department's recommendation by a majority vote at the next meeting of the county legislative body after the recommendation is received.

(e) Nothing in this section shall be construed as restricting local controls.

#### SECTION 4.

(a) Prior to filing an application to acquire a construction permit from the department, the owner or operator of any class 1A, class 1B, or class 1C concentrated

animal feeding operation shall provide the following information to the department, to the county legislative body and to all adjoining property owners of property located within one and one-half (1 ½) times the buffer distance as specified in Section 3(b) for the size of the proposed facility:

- (1) The number of animals anticipated at such facility;
- (2) The waste handling plan and general layout of the facility;
- (3) The location and number of acres of such facility;
- (4) The name, address, telephone number and registered agent for further information relative to subdivisions (1) through (3) of this subsection;
- (5) Notice that the department shall accept written comments from the public for a period of thirty (30) days; and
- (6) The address of the regional and state office of the department.

(b) The department shall require proof of the applicant being in compliance with the notification requirements of subsection (a) upon accepting an application for a construction permit. The department shall accept written comments from the public for thirty days (30) after receipt of application for a construction permit.

(c) The department shall not issue a permit to a facility described in subsection (a) to engage in any activity regulated by the department unless the applicant is in compliance with the provisions of this act.

(d) The department shall issue a permit or respond with a letter of comment to the owner or operator of such proposed facility within forty-five (45) days of receiving a completed permit application and verification of compliance with subsection (a).

## SECTION 5.

(a) The owner or operator of any flush system animal waste wet handling facility shall employ one (1) or more persons who shall visually inspect the animal waste wet handling facility and lagoons for unauthorized discharge and structural integrity at least

every twelve (12) hours, with a deviation not to exceed three (3) hours. The owner or operator of the facility shall keep records of each inspection. Such records shall be retained for three (3) years. The department shall provide a form or approve a form provided by the owner or operator for each facility for such inspections.

(b) All new construction permits for flush system animal waste wet handling facilities shall require an electronic or mechanical shutoff of the system in the event of pipe stoppage or backflow. Effective July 1, 1998, all existing flush system animal waste wet handling facilities shall have, at a minimum, an electronic or mechanical shutoff of the system in the event of pipe stoppage or backflow.

#### SECTION 6.

(a) The owner or operator of each facility with a flush system animal waste wet handling facility that poses a risk, as determined by the department to any public drinking water supply or any aquatic life or lies within a drainage basin and is within three hundred (300) feet of any adjacent landowner shall have a failsafe containment structure or earthen dam that will contain, in the event of an unauthorized discharge, a minimum volume equal to the maximum capacity of flushing in any twenty-four (24) hour period from all gravity outfall lines, recycle pump stations and recycle force mains.

(b) Construction of such structure or dam, as provided in subsection (a), shall commence within ninety days of July 1, 1998.

#### SECTION 7.

Within twenty-four (24) hours, any unauthorized discharge by a flush system animal waste wet handling facility that has crossed the property line of the facility or any unauthorized discharge by a flush system animal waste wet handling facility which the failsafe containment structure or earthen dam has failed to contain and which has crossed the property line of the facility or has entered waters of the state shall be

reported to the department and to all adjoining property owners of the facility as listed on the site-specific permit.

## SECTION 8.

(a)(1) There is hereby established in the state treasury the "Concentrated Animal Feeding Operation Indemnity Fund", to be known as the "fund" for the purposes of this act. All fees or other moneys payable pursuant to the provisions of Section 9 of this act or other moneys received, including gifts, grants, appropriations, and bequests from federal, private or other sources made to effectuate the purposes of this act shall be payable to and collected by the commissioner of the department of environment and conservation and deposited in the fund. The money in the fund, upon appropriation, shall be expended to close class 1A, class 1B, class 1C and class 2 concentrated animal feeding operations, as defined in the department's rules and regulations, that have been placed in the control of the government due to bankruptcy or failure to pay property taxes, or if the class 1A, class 1B, class 1C or class 2 concentrated animal feeding operation is abandoned property.

(2) "Abandoned property", for the purposes of this act, means real property previously used for, or which has the potential to be used for, agricultural purposes which has been placed in the control of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement, including conveyance by deed in lieu of foreclosure, and has been vacant for a period of not less than three (3) years.

(b) Any portion of the fund not immediately needed for the purposes authorized by this act shall be invested by the state treasurer in accordance with the Constitution and other laws of this state. All income from such investments shall be deposited in the fund. Any revenues deposited in the fund shall remain in the fund until expended for purposes consistent with this act and shall not revert to the general fund on any June 30. Any excess revenues on interest earned by such revenues shall not revert on any June 30, but shall remain available for appropriation in subsequent fiscal years. Any appropriation from such fund shall not revert to the general fund on any June 30, but shall remain available for expenditure in subsequent fiscal years.

#### SECTION 9.

(a) The owner or operator of each class 1A facility utilizing flush systems shall remit to the department of environment and conservation a fee of ten (10) cents per animal unit permitted, to be deposited in the fund. The fee is due and payable to the department on the first anniversary of issuance of each owner or operator permit to operate such facility and for nine (9) years thereafter on the same date. The department of environment and conservation shall provide forms which such owner or operator shall use to file and pay such fee.

(b) The fund shall be administered by the department for the purpose of carrying out the provisions of this act, relating to closure of class 1A, class 1B, class 1C and class 2 concentrated animal feeding operation wastewater lagoons.

(c) The fund administrator shall only expend moneys for animal wastewater lagoon closure activities on real property which:

(1) Has been placed in the control of the state, a county, or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default or settlement, including conveyance by deed in lieu of

foreclosure, and poses a threat to human health, the environment, or a threat to groundwater; and

(2) The state, county, or municipal government, or an agency thereof, has made reasonable and prudent efforts to sell such real property to a qualifying purchaser.

(d) The fund administrator shall expend no more than one hundred thousand dollars (\$100,000) per lagoon for animal wastewater lagoon closure activities. The fund administrator shall only expend those moneys necessary to achieve a minimum level of closure and still protect human health and the environment. Closure activities shall include lagoon dewatering and removal of animal waste sludge, if any, both of which activities shall be land-applied at a nutrient management application rate based on the most limiting nutrient as determined by the rule or regulation of the water quality control board. After dewatering, lagoons which are located in a drainage basin and are capable of meeting all applicable pond requirements of the Natural Resources Conservation Service (NRCS) with minimal additional expense, shall be maintained as ponds. Otherwise, the lagoon berms shall be breached and graded in such a manner to reasonably conform to the surrounding land contours.

SECTION 10. In the event the department determines that a class 1A, class 1B, class 1C or class 2 concentrated animal feeding operation has been successfully closed by the owner or operator, all moneys paid by such operation into the concentrated animal feeding operation indemnity fund shall be returned to such operation.

SECTION 11. The department shall conduct at least one (1) on-site inspection of each facility quarterly.

SECTION 12. The provisions of this act shall be administered by the department of environment and conservation in cooperation and with the assistance of the water quality control board.



SECTION 13. The provision of Sections 5, 6, 7 and 11 of this act shall only apply to class 1A facilities, as defined by departmental rules and regulations in effect as of July 1, 1998, which use a flush system.

SECTION 14. The provisions of this act shall not be construed to apply to any public livestock market as defined in Section 44-12-104(7).

SECTION 15. The commissioner of environment and conservation is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 16. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 1998, the public welfare requiring it.